

1 ILENE J. LASHINSKY (AZ Bar #003073)
United States Trustee
2 District of Arizona

3 CHRISTOPHER J. PATTOCK (#009797)
Trial Attorney
4 230 North First Avenue, Suite 204
Phoenix, Arizona 85003-1706
5 (602) 682-2600 (telephone)
6 (602) 514-7270 (facsimile)

7 IN THE UNITED STATES BANKRUPTCY COURT

8 FOR THE DISTRICT OF ARIZONA

9 In re:) Chapter 11
10)
NIMBUS BREWING COMPANY, LLC,) No. 4:12-bk-08122-EWH
11)
12) UNITED STATES TRUSTEE'S
13) MOTION TO CONVERT OR DISMISS
Debtor.)

14 In furtherance of the administrative responsibilities imposed
15 pursuant to 28 U.S.C. § 586(a)(3), (5) and (8), in addition to 11 U.S.C.
16 § 307, the United States Trustee for the District of Arizona, Region 14
17 ("UST") moves for conversion or dismissal of this case pursuant to 11
18 U.S.C. § 1112(b). This motion is supported by the entire record before
19 the Court in this case and the below Memorandum of Points and Authorities.
20

21 RESPECTFULLY SUBMITTED this 14th day of June, 2013.

22 ILENE J. LASHINSKY
23 United States Trustee
24 District of Arizona

25 CHRISTOPHER J. PATTOCK
26 Trial Attorney
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

Nimbus Brewing Company, LLC ("Debtor") filed a voluntary petition under Chapter 11 of the Bankruptcy Code on April 17, 2012.

On June 6, 2012 the Court set a deadline of 180 days from the filing of the case, or approximately October 15, 2012, for the filing of a disclosure statement and plan. See docket number 46. On November 9, 2012 the Court extended said deadline to December 17, 2012. See docket number 74. Although the Debtor filed a disclosure statement and plan on December 18, 2012, almost six (6) months have passed and the Debtor has failed to request or notice out a hearing on the disclosure statement. Such effectively constitutes a failure to obey the Court's Order. The failure to file a disclosure statement and plan within the time fixed by order of the court constitutes "cause" for conversion or dismissal of a Chapter 11 case. 11 U.S.C. § 1112(b)(4)(J).

Moreover, a review of the administrative docket reveals no case activity in the last six months except for the filing of monthly operating reports. Accordingly, it appears that there is an absence of a reasonable likelihood of rehabilitation and a likelihood of continuing loss to or diminution of the estate within the meaning of 11 U.S.C. § 1112(b)(4)(A). A failure to prosecute a chapter 11 case in an expeditious manner is cause to dismiss or convert the case. In re Nugelt, 142 B.R. 661, 665 (D. Del. 1992); In re Wood, 68 B.R. 613, 617 (Bankr. D. Hawaii

Payment of quarterly fees to the United States Trustee Program is required by 28 U.S.C. § 1930(a)(6). Quarterly fees are substantially

1 underpaid in this case; the current delinquency is \$8,806.93.² The
2 failure to pay quarterly fees constitutes cause for dismissal or
3 conversion of a chapter 11 case. 11 U.S.C. § 1112(b)(4)(K).
4

5 WHEREFORE, the United States Trustee respectfully requests the
6 Court to dismiss this case or convert it to a case under Chapter 7 of the
7 Bankruptcy Code.

8 RESPECTFULLY SUBMITTED this 14th day of June, 2013.

9 ILENE J. LASHINSKY
10 United States Trustee
11 District of Arizona

12 CHRISTOPHER J. PATTOCK
13 Trial Attorney
14
15

16 Copies of the foregoing mailed on
17 the 17th day of June, 2013, to:

18 Eric Slocum Sparks, Esq.
19 Eric Slocum Sparks, PC
20 110 S. Church Avenue, #2270
21 Tucson, AZ 85701

22 Nimbus Brewing Company, LLC
23 3850 E. 44th Street
24 Tucson, AZ 85713
25

26 ² \$16,606.93 has been billed, but only \$7,800 has been paid, which does
27 not include the fee due for the current quarter (2nd quarter of 2013).
28